

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

UMB BANK, NATIONAL ASSOCIATION, AS  
TRUSTEE,

Plaintiff,

v.

BLUESTONE COKE, LLC F/K/A ERP COMPLIANT  
COKE, LLC,

THOMAS M. CLARKE

and

ANA M. CLARKE,

Defendants.

Case No. 1:20-cv-2043

**CLARKE DEFENDANT'S  
MOTION FOR  
DETERMINATION OF  
LIABILITY UNDER THE  
GUARANTY OR,  
ALTERNATIVELY,  
REQUEST FOR AN  
EVIDENTIARY HEARING**

Defendants Thomas M. Clarke and Ana M. Clarke (the “Clarke Defendants”), by their counsel, Timothy E. Dixon, Esquire, hereby moves for this Court to make a determination of the extent of liability of Defendant Ana M. Clarke or, in the alternative, requests an evidentiary hearing to determine the extent of such liability. In support of this Motion, the Clarke Defendants state as follows:

**I. FACTS**

1. On November 16, 2020, this Court entered an Opinion and Order granting summary judgment against all Defendants [Doc 46]. As of the date of the Opinion and Order, the amount of the liability of each Defendant remained unresolved.

2. The facts are as stated in the following documents filed by the Clarke Defendants (i) Affidavit of Thomas M. Clarke and (iii) Memorandum of Law in Support of Clarke Defendant’s Motion for Determination of Liability Under the Guaranty or, Alternatively, Request for an

Evidentiary Hearing, all filed concurrently herewith. All such documents are hereby incorporated by reference.

## **II. ARGUMENT**

3. The legal arguments stated in the Clarke Defendants' Memorandum of Law in Support of Clarke Defendant's Motion for Determination of Liability Under the Guaranty or, Alternatively, Request for an Evidentiary Hearing are hereby incorporated by reference.

## **III. REQUEST FOR RELIEF**

Based on the foregoing, the Clarke Defendants respectfully request the following relief:

- A. That this Court determine the liability of the Limited Guarantor under the Guaranty to be ZERO.
- B. In the alternative, that this Court schedule an evidentiary hearing to determine the amount of the liability of the Limited Guarantor under the Guaranty.
- C. That this Court grant such further relief as justice may require.

Respectfully submitted this 17<sup>th</sup> day of May, 2021.



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*Counsel for the Clarke Defendants*

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 17, 2021 a copy of foregoing was filed through the Court's ECF system and will be sent electronically to the registered participants. Interested parties may access this filing through PACER.

A handwritten signature in dark ink, appearing to read "Timothy E. Dixon". The signature is stylized with a large, sweeping initial 'T' and a distinct 'D'.

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